



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 31, 2004

Ms. Mia Settle-Vinson
Assistant City Attorney
City of Houston Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2004-2584

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID#198544.

The City of Houston (the "city") received a request for all data in databases that support the city police department vice division's sexually oriented business permits, dance hall permits and dancer/entertainer permits. You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

Initially, you advise that the city's police department is unable to provide a printout of the database because the computer program will only generate actual licenses based upon entry

¹You have submitted information related to entertainer permits only. We assume that, because you have not submitted information related to sexually oriented business permits or dance hall permits, the city has released this information to the requestor. If the city has not released this information, it must do so at this time. See Gov't Code §§ 552.301, .302.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

of data into the database. Further, you advise that, because the city is not authorized to distribute the computer program itself, you have not furnished any information in diskette or other electronically recorded format. This office presumes that original copies of Exhibit 2 applications completed by individuals seeking a permit are maintained by the city. If so maintained, we note that these completed applications are also responsive to this request.

We must address the city's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. As you acknowledge, however, you did not submit to this office written comments stating the reasons why the stated exceptions would allow the information to be withheld or a copy or representative sample of the requested information within fifteen business days as required by section 552.301(e). Consequently, the city failed to comply with section 552.301 of the Government Code in requesting this decision.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A governmental body that demonstrates a compelling reason must show that the requested information is made confidential by law or third party interests are at stake. Because sections 552.101 and 552.130 present compelling reasons for withholding information from disclosure, we will consider your section 552.101 and section 552.130 claims.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that the submitted information is confidential under the decision in *N.W. Enterprises, Inc. v. City of Houston*, 27 F.Supp.2d 754 (S.D. Tex. 1998), *aff'd in part, rev'd in part, dism'd in part*, 352 F.3d 162 (5th Cir. 2003). As you are aware, at issue in that case was a city ordinance regulating sexually oriented businesses and specifying the personal information required of individuals applying for permits to work as managers or entertainers in such businesses. *See* 27 F.Supp.2d at 836. In prohibiting the public release of information relating to the permit applications, the federal district court concluded:

[T]here is meaningful potential danger to individuals working in sexually oriented businesses if the information in their permit applications is disclosed to the public. The Court concludes further that the potential for disclosure is likely to have a chilling effect on the applicants' protected speech. These dangerous and chilling effects are sufficiently severe that the information should be held confidential by the city.

Id. at 843. In its decision in this case on appeal, the Fifth Circuit upheld the district court's finding that information on entertainer and manager permit applications is confidential under the Act. *See N.W. Enterprises, Inc.*, 352 F.3d at 195. Therefore, we agree that the submitted information is confidential under the decision in *N.W. Enterprises*. *Id.* Accordingly, the city must withhold the information in its entirety under section 552.101 of the Government Code. Because we have resolved this issue under section 552.101, we need not address your other claimed exception.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cary Grace", with a long horizontal flourish extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/lmt

Ref: ID#198544

Enc. Submitted documents

c: Mr. Andrew R. Siverly
P.O. Box 440071
Houston, Texas 77244
(w/o enclosures)